



State of Idaho

DEPARTMENT OF WATER RESOURCES

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April 25, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702

RE: Petition to Reinstate Permit no. 63-8149

Dear Dana:

The Department has received the Petition to Reinstate Permit for the permit referenced above. Susan D. Miner, petitioner, requests reinstatement of the permit with the original priority date, or, in the alternative, with the priority date advanced for each day that the license fee is late. Information in the petition indicates that the petitioner currently owns land described as the place of use under the permit.

Application for Permit 63-8149 was received by the Department on June 17, 1975 and approved on July 22, 1975. Proof of beneficial use was due on July 1, 1980 and submitted on June 20, 1980. A field exam was not completed for the permit.

House Bill 671 was enacted by the legislature in 1986 (Section 42-217, Idaho Code) and required that, "Holders of permits who have submitted proof of beneficial use but have not had their project examined for beneficial use shall submit the fee required in section 42-221, Idaho Code, within sixty (60) days of notification by the director of the department of water resources that a license examination fee is required." The Department's position is that the legislation applies to any permit where a proof statement has been submitted and an exam has not been completed. The Department sent notice on April 17, 1986 by certified mail to the permit holder at the address of record that an exam fee was due. The notice was returned as undeliverable; the permit holder did not provide a new address to the Department. An exam fee has not been submitted to the Department for the permit.

Section 42-217, Idaho Code provides that, "Failure to submit the fee in the time allowed shall be cause for the director to advance the date of priority of the permit one (1) day for each day that the fee is late; provided that if the fee is not fully paid within one (1) year of the time it is due, the director of the department of water resources may consider the proof of beneficial use for the permit to be incomplete and lapse the permit, as provided in section 42-218a, Idaho Code." Section 42-218a, Idaho Code provides that, "A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail..."

Since the permit holder did not submit the exam fee within one year of the due date, the permit has lapsed. The Department did not send a lapse notice to the permit holder at the address of record; consequently, proper notice of lapsing of the permit was not provided to the permit holder. This letter will serve as notice to the petitioner that Permit 63-8149 has lapsed.

Section 42-218a, Idaho Code provides "That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof..." The Department will provide the petitioner 60 days to submit the exam fee to reinstate the permit. The exam fee is \$100 based on the permitted amount, or \$50 if the beneficial use of water developed was 0.2 cfs or less. If the exam fee is submitted within 60 days of the date of this letter, the permit can be reinstated with the priority date advanced based on the date the exam fee was originally due (60 days after April 17, 1986).

If the permit is reinstated, the Department will need to complete a field exam to determine the extent of beneficial use developed during the authorized development period (1975 through 1980). Initial review of the place of use authorized under the permit using aerial photographs dating 1975, 1977 and 1980 has not confirmed irrigation use during that period. The petitioner may want to conduct further review to confirm irrigation use if reinstatement is pursued.

If you have questions regarding this issue, please feel free to call me at 208-287-4948.

Sincerely,



Jeff Peppersack
Chief, Water Allocation Bureau